

No. 15875 ✓

United States
Court of Appeals
for the Ninth Circuit

UNION OIL COMPANY OF CALIFORNIA, a
Corporation,

Appellant,

vs.

JOSEPH SALMERI,

Appellee.

Transcript of Record
(In Three Volumes)

Volume I
(Pages 1 to 56)

FILED

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PAUL P. O'BRIEN, CLERK

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Proctors for Libelant & Appellee.

FREDERIC G. NAVE,
BOYD & TAYLOR,
350 Sansome St.,
San Francisco, California,

Proctors for Respondent & Appellant.

In the District Court of the United States in and
for the Southern Division of the Northern Dis-
trict of California

In Admiralty No. 27117

JOSEPH SALMERI,

Libelant,

vs.

UNION OIL COMPANY OF CALIFORNIA, a
Corporation; FRANCES E. CARDINALE, Ad-
ministratrix of the Estate of FRANK JOSEPH
CARDINALE, Also Known as FRANK J.
CARDINALE, Deceased; IDALINE JENNER
CARDINALE, BLACK COMPANY, a Corpo-
ration; WHITE COMPANY, a Corporation;
JOHN DOE, RICHARD ROE and PETER
ROE,

Respondents.

LIBEL

(Damages for Personal Injuries—\$100,000.00)

To the Honorable Judges of the Above-Entitled
Court:

The libel of Joseph Salmeri, in a case of libel,
civil and maritime, for damages for personal in-
juries, alleges as follows:

I.

That the respondent Union Oil Company of Cali-
fornia is now and was at all times herein mentioned

a corporation duly organized and existing under and by virtue of the laws of the State of California and authorized to do and doing business in the City and County of San Francisco, State and Northern District of California.

II.

That the respondents Black Company, a corporation, and White Company, a corporation, are now and were at all times mentioned herein corporations duly organized and existing under and by virtue of the laws of one of the States of the United States and were at all of said times authorized to do and doing business in said City and County of San Francisco, State and Northern District of California.

III.

That the true names of respondents Black Company, a corporation; White Company, a corporation; John Doe, Richard Roe and Peter Roe, are unknown to libelant and for that reason said respondents are sued herein under fictitious names. Libelant prays that when the true names of said respondents are ascertained they be substituted herein in the place and stead of said fictitious names.

IV.

That on or about the 28th day of September, 1954, Frank Joseph Cardinale, also known as Frank J. Cardinale, died; that thereafter, to wit, on the 12th day of November, 1954, after proceedings duly had for such purpose, respondent Frances E. Cardinale

was duly appointed administratrix of the estate of Frank Joseph Cardinale, also known as Frank J. Cardinale, Deceased, by the Superior Court of the State of California, in and for the County of Monterey and on said 12th day of November, 1954, qualified as such administratrix and entered upon the administration of said estate and ever since such time has been and now is the duly appointed, qualified and acting administratrix of the estate of said Deceased. That said Frank Joseph Cardinale, also known as Frank J. Cardinale, Deceased, will hereinafter be referred to as "Decedent."

V.

That at all times on or about the 28th day of September, 1954, and at the time libelant was injured as hereinafter alleged, and for a long time prior thereto, said Decedent and respondent Idaline Jenner Cardinale owned, operated, managed, controlled, navigated and maintained the fishing vessel Santa Lucia, which vessel was at all of said times a vessel of the American Merchant Marine, employed as a commercial fishing vessel.

VI.

That at all times on or about the 28th day of September, 1954, and at the time libelant was injured as hereinafter alleged, libelant was employed by said Decedent and respondent Idaline Jenner Cardinale, to work as a seaman, to wit, as a fisherman on board, and as a member of the crew of, said vessel

Santa Lucia, and was working on board said vessel in the course and scope of his said employment; that during all of said times said vessel was afloat on navigable waters.

VII.

That on or about the 28th day of September, 1954, and at the time libelant was injured as hereinafter alleged and for a long time prior thereto, respondent Union Oil Company of California, a corporation, owned, maintained, managed, operated and controlled, on piers and land at Avila, California, a commercial marine service and fueling station, gasoline, oil and other petroleum products, tanks and other facilities for the storage of said gasoline, oil and other petroleum products, and equipment for use in connection with said commercial marine service and fueling station, gasoline, oil, other petroleum products, tanks and other facilities.

VIII.

That on or about the 28th day of September, 1954, and at the time libelant was injured as hereinafter alleged, and while said vessel was moored at one of said piers in connection with the fueling of said vessel by respondent Union Oil Company of California, a corporation, and said commercial marine service and fueling station, said Decedent and respondents herein, except respondent administratrix, negligently caused and permitted an explosion and fire to occur in, on, around and about said vessel, whereby libelant was made weak, sick, sore, lame,

stiff and disabled and caused to suffer a fracture of his right clavicle, compound comminuted fractures of the bones of his right wrist and arm, injury to the nerves of his right wrist and arm, severe contusions and lacerations of the muscles of the right wrist and arm, second degree burns of his extremities and body, contusions, bruises, sprains and strains of the entire right arm, wrist, hand and shoulder extending into the base of the neck, other parts of the body and great nervous shock; that because of said injuries libelant ever since receiving the same, has been and always will be weak, sick, sore, lame, stiff, disabled and deformed; that the aforesaid negligence of Decedent and respondents herein, except respondent administratrix, directly and proximately caused libelant to be injured as aforesaid and Decedent and respondents herein, except respondent administratrix, did negligently cause and permit libelant to be so injured.

IX.

That because of said injuries, libelant has suffered ever since receiving the same and always will suffer great physical and mental pain and anguish.

X.

That immediately prior to being injured as aforesaid, libelant was in good physical and mental condition and earning or capable of earning at his occupation of seaman approximately \$350.00 per month, together with his board and lodging of the

reasonable value of \$240.00 per month, but because of said injuries, libelant has been unable to work or even earn any money since the said 28th day of September, 1954, will be unable to work or earn money for a long period of time to come, and thereafter will only be able to work and earn money at great financial loss.

XI.

That because of said injuries and the aforesaid negligence of Decedent and respondents herein, except respondent administratrix, libelant necessarily incurred reasonable hospital and other medical bills in a reasonable sum presently unknown to libelant and libelant in the future will necessarily incur further and additional reasonable expenses for hospital and other medical expenses in an amount not as yet known to libelant, and as to which libelant prays leave to amend this libel and produce proof thereof at the time of trial.

XII.

That by reason of the premises, libelant has been damaged in the sum of \$100,000.00, which amount libelant asks be awarded to him by this Court.

XIII.

That libelant's aforesaid claim in respect to damages for personal injuries was heretofore and within the time prescribed for the filing of creditor's claims by the provisions of the Probate Code of California and the Notice to Creditors published by respondent

Frances E. Cardinale, Administratrix of the Estate of Frank Joseph Cardinale, also known as Frank J. Cardinale, Deceased, duly and regularly presented to the said Estate as directed in said Notice to Creditors, and said claim has been rejected and disallowed.

XIV.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libelant prays that process, according to the courses of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against the respondents and each of them and that respondents and each of them may be cited to appear and answer, all and singular, the matters aforesaid and that this honorable Court would be pleased to decree to the libelant the sum asked for by the libelant in the aforesaid libel and for costs and for such other and further relief as in law and justice libelant is entitled to receive.

/s/ RUSSELL ZACHES,

/s/ SAMUEL VARTAN,

MICHELSON, WHELAN &
MICHELSON,

Proctors for Libelant.

United States of America,
State and Northern District of California,
County of Monterey—ss.

Joseph Salmeri, being first duly sworn, deposes and says:

That he is the libelant named in the above-entitled cause; that he has read the within and foregoing libel and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters that he believes it to be true.

/s/ JOE SALMERI.

Subscribed and sworn to before me this 2nd day of May, 1955.

[Seal] /s/ EDNA MASON,
Notary Public in and for the County of Monterey,
State of California.

[Endorsed]: Filed May 3, 1955.

[Title of District Court and Cause.]

No. 27117

ANSWER TO LIBEL

Comes now the Respondent, Union Oil Company of California, a corporation, and answering Libelant's Libel on file herein, admits, denies and alleges as follows:

I.

Answering Paragraphs IV, VI, VII, IX, X, and XIII, said respondent alleges that it has no information or belief upon the subject sufficient to enable it to answer the allegations therein contained and placing its denial on that ground, denies each and every, all and singular, the allegations therein contained and each and every part thereof.

II.

Answering Paragraphs VIII, and XI, denies each and every, all and singular, the allegations therein contained and each and every part thereof insofar as the same names, mentions or concerns this answering respondent.

III.

Answering Paragraphs XII and XIV, denies each and every, all and singular, the allegations therein contained and each and every part thereof.

Denies that Libelant, Joseph Salmeri, has been damaged in the sum of \$100,000.00 or any other sum or sums whatsoever or at all.

Further answering said Libel, and as and for a separate and distinct defense thereto and plea of contributory negligence, said respondent alleges that Libelant, Joseph Salmeri, was negligent and careless in and about the matters set forth in said Libel in the following manner, to wit: that at the said time and place Libelant, Joseph Salmeri, failed to use due or any care or caution for the protection of his own safety; that said acts of carelessness and negli-

gence on his part proximately caused or contributed to the damage sustained or injury sustained.

Wherefore, said respondent prays that Libelant take nothing by his action and that said respondent be hence dismissed with its costs herein incurred.

BOYD & TAYLOR,

By /s/ FREDERIC G. NAVE,
Proctors for Respondent, Union Oil Company of
California, a Corporation.

State of California,
City and County of San Francisco—ss.

Frederic G. Nave, being first duly sworn, deposes and says: That he is one of the proctors for respondent herein; that he has read the foregoing Answer to Libel and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes them to be true.

/s/ FREDERIC G. NAVE.

Subscribed and sworn to before me this 13th day of June, 1955.

[Seal] /s/ VIRGINIA RUTH HOLLOWAY,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires Aug. 11, 1956.

Affidavit of service by mail attached.

[Endorsed]: Filed June 13, 1955.

[Title of District Court and Cause.]

No. 27117

ANSWER TO LIBEL IN PERSONAM

To the Honorable Judges of the Above-Entitled Court:

Frances E. Cardinale, administratrix of the Estate of Frank Joseph Cardinale, also known as Frank J. Cardinale, deceased, and Idaline Jenner Cardinale answer the Libel filed herein, admitting, denying and alleging as follows:

I.

Answering Paragraphs II, III, VII, IX, X and XI of libelant's Libel, respondents allege that they have no information or belief sufficient to enable them to answer the allegations therein contained, and, basing their denial on that ground, deny each and every, all and singular, the allegations therein contained.

II.

Answering Paragraphs V, VI, VIII and XII of said Libel, respondents deny each and every, all and singular, the allegations therein contained.

Deny that libelant Joseph Salmeri has been damaged in the sum of \$100,000.00, or any other sum or sums whatever, or at all.

Wherefore, respondents Frances E. Cardinale and Idaline Jenner Cardinale pray that libelant take

nothing by his action and that said respondents be dismissed with their costs herein incurred.

/s/ MORTON L. SILVERS,

MORGAN & BEAUZAY,

Proctors for Respondents Frances E. Cardinale and
Idaline Jenner Cardinale.

State of California,
City and County of San Francisco—ss.

Frances E. Cardinale, being first duly sworn, deposes and says:

That she is one of the respondents in the above-action; that she has read the foregoing Answer to Libel In Personam, and knows the contents thereof; that the same is true of her own knowledge, except as to the matters which are therein stated on her information or belief and as to those matters that she believes it to be true.

/s/ FRANCES E. CARDINALE.

Subscribed and sworn to before me this 1st day of October, 1955.

[Seal] /s/ PAULA G. SMITH,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires November 18, 1958.

State of California,
City and County of San Francisco—ss.

Idaline Jenner Cardinale, being first duly sworn,
deposes and says:

That she is one of the respondents in the above
action; that she has read the foregoing Answer to
Libel in Personam, and knows the contents thereof;
that the same is true of her own knowledge, except
as to the matters which are therein stated on her in-
formation or belief and as to those matters that she
believes it to be true.

/s/ IDALINE JENNER
CARDINALE.

Subscribed and sworn to before me this 1st day of
October, 1955.

[Seal] /s/ PAULA G. SMITH,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires November 18, 1958.

Affidavit of service by mail attached.

[Endorsed]: Filed Oct. 4, 1955.

[Title of District Court and Cause.]

MINUTE ORDER RE CONSOLIDATION
OF CASES

(August 5, 1957)

Present: The Honorable Louis E. Goodman,
District Judge.

27116—Salmeri vs. Cardinale.

27117—Salmeri vs. Union Oil Co. of Calif.

27118—Pedrasaz vs. Cardinale.

27119—Pedrasaz vs. Union Oil Co. of Calif.

27120—Tarantino vs. Cardinale.

27121—Tarantino vs. Union Oil Co. of Calif.

27122—Belleci vs. Cardinale.

27123—Belleci vs. Union Oil Co. of Calif.

27124—Belleci vs. Cardinale.

27125—Belleci vs. Union Oil Co. of Calif.

27156—J. Romeo vs. Union Oil Co. of Calif.

27157—S. Romeo vs. Union Oil Co. of Calif.

27158—Cardinale vs. Union Oil Co. of Calif.

27159—Adagio vs. Union Oil Co. of Calif.

The above-entitled cases came on regularly this day to be set for trial. On motion of John Whelan, Esq., Ordered all of these cases and case No. 27364—Cardinale vs. Union Oil Company be consolidated and trial set for August 26, 1957.

[Title of District Court and Cause.]

No. 27,116 and Consolidated Cases

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION OF THE COURT

Reporter's Transcript
September 12, 1957

Before: Hon. Sylvester Ryan, Judge.

Appearances:

For the Libelant:

SAMUEL VARTAN, ESQ.,
MICHELSON, WHELAN &
MICHELSON, By
JOHN J. WHELAN, ESQ.

For the Respondents:

MORTON L. SILVERS, ESQ.,
BOYD AND TAYLOR, By
FREDERIC G. NAVE, ESQ.

The Court: It is five minutes after 1:00. Mr. Silvers is not yet here. What is the practice in this District? In my District it is the practice to proceed, since we have no evidence to take and are convened here only to render my decision. Is that the practice here?

Mr. Vartan: Yes, your Honor.

The Court: I have, since the adjournment of yesterday, reviewed the notes I made during the

trial on the evidence; I have refreshed my memory from this reading; I have considered all the evidence, and the arguments made by the able proctors, and now render my Findings and Decision.

I desire to thank counsel for their unfailing kindness and courtesy extended to me throughout the trial, and to commend each and every one of them for the diligent, efficient and conscientious manner in which they represented the interests for which they have appeared.

The Santa Lucia was a diesel-powered fishing vessel of the purse seiner class. She had been built in 1937 with a 2-inch by 6-inch pine hull exterior, and frame of 3-inch by 4-inch and 6-inch by 6-inch, and wooden decks of 2 $\frac{3}{4}$ -inch by 3 inches. Her beams were 8 $\frac{1}{4}$ x1 $\frac{1}{2}$, spaced at 22 inches. She had one hold of 75-ton capacity with one hatch, which was used as a fish hold. The hull was 72.8 feet long, 20.5 feet beam, and depth of 9.6 feet.

The ship was 109 gross tons and 69 net tons. She was [2*] manned by a crew of 10, including her master-co-owner Frank J. Cardinale. We have received photographs of her in evidence.

The Santa Lucia at all times material was owned, operated and controlled by Frank J. Cardinale and Idaline Jenner Cardinale as co-owners. She was of American registry and was employed as a commercial fishing vessel.

She now rests on her bottom in the deep water off shore of Avila, California. She is a total loss. She

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

was towed to sea following an explosion and fire which occurred aboard her on September 28, 1954, while she was taking on gasoline at the Marine Gasoline Service Station operated by Union Oil Company of California at its pier and wharf at Avila.

Frank J. Cardinale, the co-owner of the Santa Lucia, met his death in that catastrophe, and on November 12, 1954, Frances E. Cardinale, his widow, was duly appointed by the Superior Court of the State of California, Monterey County, and thereafter duly qualified as administratrix of his estate.

A prior libel in personam filed by Frances E. Cardinale and others against Union Oil Company of California, File No. 27,098, to recover for the alleged wrongful death of Frank J. Cardinale was tried to this Court on November 30, 1955, and resulted in the entry of a final decree and judgment dismissing the libel upon the merits.

Exceptive allegations pleaded under this decree and judgment as a bar to the libel now before this Court, filed by the [3] said Frances E. Cardinale as administratrix, and Idaline Jenner Cardinale, File No. 27,364, to recover for the loss of the Santa Lucia was overruled by Order entered on December 20, 1956.

This Court may take notice of the proceedings had on the libel No. 27,098 had in this District, and it has done so.

It may likewise reconsider the questions of law presented by the exceptive allegations heretofore overruled, and it has done so.

This Court accepts, agrees with and applies the

ruling heretofore made overruling these exceptive allegations, and it has therefore considered the libel filed by the said administratrix and Idaline Jenner Cardinale upon its merits and on the evidence presented.

It appears from the evidence that shortly before 6:00 p.m. on September 28, 1954, the Santa Lucia approached the wharf of the Union Gas Company of California at Avila from the southeast. One of three men standing on the deck above her cabin called to Charles H. Caldwell, the employee of the Union Gas Company who was in charge of servicing small craft at the wharf marine marketing station, and said that he wanted to take on about 30 gallons of gasoline. This was Frank J. Cardinale, now deceased, who was one of the part owners of the Santa Lucia.

Caldwell instructed him to proceed with the ship to the [4] marketing station, which was located on a projecting platform of the long pier running from the deep water wharf to shore.

We have received in evidence several photographs of this location and a diagram of said area would show the relative positions of the equipment, tanks, and other structures at the station.

As the Santa Lucia proceeded on to the marketing station, Caldwell went to the office on the wharf, picked up the charge book and his cash box, took them to the small oil shed at the marketing station, and then went over to the side of the station where the Santa Lucia was docking. The ship pulled in alongside and tied up port side to, with the bow headed to shore. Caldwell helped to tie her up. The

engines on the Santa Lucia were shut down, and Cardinale took the gas hose from Caldwell, inserted the nozzle at the end of it into the gasoline intake on the deck of the Santa Lucia.

Caldwell then opened up the valve on the dock, which permitted the flow of gasoline into the tank of the Santa Lucia. When Caldwell handed down the gasoline hose, he asked Cardinale approximately how much gasoline he would need. Cardinale, speaking in good English, replied that she would take about 30 gallons. Caldwell then asked if the deck engines of the Santa Lucia weren't diesel, if the main engines of the Santa Lucia weren't diesel, and Cardinale responded that they were but that he did not need diesel, just gasoline for his [5] auxiliary engine.

Caldwell then asked Cardinale his name and home port, and Cardinale replied that he was Frank Cardinale from Monterey.

Caldwell at this point again went back into the oil shed on the pier and checked up on Cardinale's credit. In the meantime, gasoline continued to flow down from the gasoline tank on the wharf, through the meter, and then into the rubber, reinforced with wire, hose from which it emerged through a spring lever valve control nozzle, at the end of which Cardinale had it inserted into the fill opening, which was flush with the deck, and was located just aft of the forward port side of the cabin.

In a few minutes Caldwell came out of the oil shed, looked over the rail on the wharf, saw Cardinale still filling the tank on the Santa Lucia, looked

at the meter on the wharf, saw that the Santa Lucia had taken on about 20 gallons of gasoline.

It was at this point that some of the crew of the Santa Lucia asked for water, and Caldwell passed the water hose down to them and watched as they placed it in a water fill opening near the cabin at the port aft end. The crew asked for another water hose. Caldwell passed a second one down to them, and they took it around aft of the cabin to the starboard side. Caldwell again returned to the shed, this time to make out the sales ticket. Gasoline still was flowing [6] into the Santa Lucia.

He came out of the shed in a few minutes and went then to the meter on the wharf, which showed 58½ gallons had been delivered. He called down to Cardinale that 58½ gallons had been taken on, and added that it looked as though he would take 60 gallons. At this point Cardinale shut the nozzle off immediately.

I find that Cardinale expressed surprise, and said loudly, "Where did it go to?" And immediately after shutting off the nozzle by releasing his manual pressure lever, pulled the nozzle out of the fill opening, lay it on the deck just aft of the fill opening, turned and spoke to some crewmen who were beside him. Cardinale then walked forward, around the cabin to the starboard side, and in a few minutes returned to the location of the fill opening carrying a wooden sounding stick about one-half inch square and approximately four to five feet long.

Cardinale raised the stick and was about to insert the end of it into the fill opening when an explosion

occurred and fire broke out aboard the vessel, spread to the pilings, first to the under deck of the portion of the wharf where the service station was located and later to the upper decking of the wharf.

Frank J. Cardinale was killed. Jacques Cardinale, one of the crew, also met his death. Joseph Salmeri, Francisco [7] Pedrasaz, Antoine Bellici and Nino Tarantino, all seamen on the vessel, sustained injuries, and libels in personam have been filed by them.

The claim of Nino Tarantino, libels No. 27,120 and 27,121, have been disposed of during the trial.

The remaining libels filed by the seamen Salmeri, Pedrasaz and Bellici, are before us, as is the libel filed by the administrator of the estate of Jacques Cardinale for wrongful death.

Libels in personam filed by four seamen, Joseph S. Romeo, No. 27,156; Salvadore Romeo, 27,157; Francois Cardinale, 27,158; and Horace Adagio, 27,159, for loss of wages and income simultaneously with the trial of the other libel and with the trial of the petition for limitation of liability filed by the owners of the Santa Lucia.

The libels filed by these four seamen for loss of wages and income were disposed of during the trial and are not before us.

The situation is not unusual in that there is no direct evidence as to the manner in which the explosion and subsequent fire occurred.

"The origin of gasoline fires must, in most cases, be established by circumstantial evidence." The New

Berne, 80 Fed. 2d 244 at 247; Court of Appeals, Fourth Circuit, 1935. [8]

The volatility of gasoline is now general if not common knowledge, and it is well known that "its rapid vaporization and resultant mixture of air and vapor in certain proportions is highly inflammable and will cause fire and, if closely confined, an explosion wherever there is present an igniting factor. In many, if not most instances of gasoline fires and explosions, it is very difficult to ascertain what was the actual factor of ignition. The striking of a match or other open flame, or a very small electric spark generated by friction or created by the dropping of some metallic instrument on a stone or cement floor may cause ignition if it comes in contact with mixed vapor and air. In this case, as in most others, there is no direct evidence as to what was the igniting factor."

Elkton Auto Sales Corporation against State of Maryland and others, 53 Fed. 2d 8 at page 10; Court of Appeals, Fourth Circuit, 1931.

The Court must disregard the many subtly suggested ways of origin of explosion and fire, and accept the cause as indicated by the probative effect of all the proof and circumstances. To find that the explosion did not take place on and originate from causes present aboard the Santa Lucia, one would have to be blind to the evidence. Rudy DelRio, a diver employed to examine and inspect the sunken hull of the Santa Lucia as she lay on September 29, 1954, [9] adjacent to the pier, found a section of the port side approximately four feet above the water

line and extending from the bow to the mast or end of the cabin section, was completely sheared off; that the starboard side was split open at the bow and was lying on the bottom, back to approximately the middle of the cabin section. The main deck and cabin sections were completely sheared off. The hull aft of the cabin was shattered in various spots. Looking down at the bow section from above, the starboard and main keel section was split approximately four feet apart at the bow. It was a maze of hanging cables and lines and other debris and rigging.

The Santa Lucia lay at the wharf, shattered, with the stern afloat and her bow dragging the bottom. All of those surviving who were present at the scene of the disaster described how immediately following the explosion the debris of the cabin or deck housing flew through the air.

The explosion and fire had origin in the bowels of the Santa Lucia and below her deck.

We next consider what was the probable cause of the explosion and fire as shown by the evidence.

The gasoline fuel tank into which the 58½ gallons were delivered or poured was located in the engine room under the main deck, suspended there beneath the deck by hangers. It could not be seen by one on deck. The tank was of metal [10] construction, approximately 48 inches by 24 inches by 6 inches, and had a capacity of 30 gallons.

As the tank was filled, the excess delivery of at least 28 gallons had to go somewhere. The tank did not overflow on deck through the fill opening. There

was only one other place the excess could go, and that was below.

Sketch No. 3 of Respondent's Exhibit 6 depicts the tank and the piping leading from it. Directly beneath the bottom of the tank were two valves. One carried no further piping and was designed for drainage and cleaning purposes. This valve may have been leaking or open. We do not know. No one was in the engine room where the gasoline tank was located.

The other valve connected with a copper piping and ran to a point where a branch feed line ran to a gasoline engine, which operated an auxiliary generator. On this branch feed line there was a third valve. If this valve were not shut off, gasoline would have a gravity flow into the carburetor of this small engine, and when the carburetor glass container was filled, it overflowed and soon flooded the deck area about the auxiliary engine. This valve may have been left open. There is testimony that this and all the valves had been closed off. The Court does not accept it as the truth.

Continuing beyond this branch line to the engine of the auxiliary generator was further piping leading to the Wisconsin [11] pump, and just before the line reached the engine of this pump was a fourth valve. The situation with reference to this valve was the same as the valve of the engine for the auxiliary generator. If it was not turned off, it would flood the engine and continue to pour on through to the deck.

Gasoline leakage there was, either from the tank, the couplings, the piping, the engine or the valves.

The leakage resulted in making the Santa Lucia unsafe and unseaworthy, and was a proximate cause of the explosion.

The evidence also disclosed that there were a number of electric storage batteries in the engine room, which were used to supply electric power. How many there were we do not know, nor has the owner produced any witness who could describe in detail the equipment in the engine room or on the ship, nor have we had a ship's plan presented in the evidence. Such sketches as we have had of the ship are rough indeed and leave much to be desired, and were made by an insurance ship's surveyor after the explosion and while his deposition was being taken. The surveyor's memory is not reliable as to many matters.

It appears, too, that these auxiliary engines which operated the generator and pump could be shut off either by cutting the electric current from the batteries or by turning the valve on the gasoline feed line. If the engines were shut down by cutting off the circuit, the gasoline would [12] continue to flow until the valve was manually turned off. That there was a leakage of gasoline into the engine room and bilge of the ship is clear.

We come now to a consideration of the cause of the ignition of the vapor which of necessity followed the gasoline leakage. The galley, located on the main deck, had a diesel cooking stove. It was close to supper time. The cook said he had made french fried potatoes, and had turned off the burner; that he intended to cook steaks, and that he had prepared

them and was waiting to cook them after the fueling operation had been completed. We accept that testimony with some reluctance.

It appears undisputed that a pilot light on this diesel cooking stove remained lit during all the time the gasoline was pouring into the ship. The pilot light, if turned down, projected a quarter inch flame; if not turned down, a flame of about one and one-quarter inches. The cook testified it had been turned down. We accept this testimony with similar reluctance.

In the galley was a water supply which came from a tank and when the tank ran low from water use, an electric motor powered pump started operating in the engine room. The cook was working in the galley. If this electric motor in the engine room started to replenish the water in the tank, common sense tells us that sparks generated would have been efficient means and sufficient means [13] to ignite gasoline vapors then present.

The nozzle of the hose through which the gasoline poured into the Santa Lucia was a spring lever type, and was so constructed as to permit the flow of gasoline through the nozzle. The lever was opened by manual pressure, and to stop the flow the lever was merely released.

Frank J. Cardinale held this nozzle and controlled this flow. He had ordered 30 gallons of gasoline. He was chargeable with knowledge of the capacity of the gasoline tank on his own small fishing vessel. He had been told when 20 gallons had been delivered. The exercise of common sense and pru-

dence should have warned him something was wrong when 381½ more gallons flowed into the tank with no overflow from the fill opening.

Frank J. Cardinale, one of the owners, was personally negligent and at fault in the manner in which he conducted this operation.

We conclude that the explosion was due to an unseaworthy condition aboard the *Santa Lucia*, and to the personal and active negligence of Frank J. Cardinale, one of the co-owners of the ship.

We conclude that the owners are personally liable in these libels in personam for the injuries and damage sustained by the members of the crew.

We now come to consider whether the Union Oil Company of [14] California was at fault and was negligent, and whether its negligence was a proximate and contributing cause of the catastrophe.

Although Cardinale aboard the *Santa Lucia* had control of a means by which the flow of gasoline could be shut off, he did not have control of the only means by which that could be done. Located on the wharf of the Union Gas Company was a control valve by which the delivery of gas could be shut off by one quarter turn. The Union employee, Caldwell, on the wharf had opened this valve to permit the flow of gasoline at the very beginning of the delivery. If he had not opened this valve, gasoline could not have flowed into the *Santa Lucia*.

Delivery was being made of a highly inflammable liquid. The Union Gas Company and its employees were chargeable with the knowledge of its volatile character, and Caldwell himself had personal knowl-

edge of this as is disclosed by his statement in Respondent's Exhibit 11 wherein he stated, "We are always alert to potential sources of ignition on a private boat when fueling. I could not hear any engines running and could see no one smoking. I observed no activity in the galley. I didn't hear the radio running."

The piping, tanks and equipment at the marine service station was in good order and condition. There was no leakage or break. The fire and explosion did not originate on this [15] wharf.

The Union Gas Company may not shed itself of all responsibility in connection with the delivery of this highly inflammable material by urging that it was a self-servicing operation in which the Santa Lucia exercised sole control, and assumed to all full responsibility. I find it was a joint operation. Both the Santa Lucia and the Union Oil Company were required in law to exercise care and prudence. Whether they did so under the circumstances is a question of fact for the Court to determine at the trial of all factual issues.

I find that the Union Oil Company was negligent and at fault, that it did not exercise reasonable care and prudence, and that its failure so to do was a proximate cause of the explosion and fire on the Santa Lucia.

There was a meter on the wharf which measured and recorded the flow of gasoline into the Santa Lucia. It was located about five feet set back from the edge of the dock. It was not visible to Cardinale as the gasoline flowed, or to anyone aboard the ship,

which was riding with the deck about nine feet below the coaming of the wharf.

The numerals recording the flow were about one quarter to three-eighths inch in height, and it stood about 26 inches above the floor. There was a duty upon Caldwell to keep some watch on this meter, particularly in view of the fact that he knew that the Santa Lucia was diesel powered, that [16] gasoline was being taken on only for the auxiliary engine; that he had been told the Santa Lucia wanted about 30 gallons, and that Cardinale had later told him, "This ship will take about 30 gallons," and that as delivery was being made he had looked at the meter and found that 20 gallons had already been delivered.

Caldwell did not exercise the care of a reasonably prudent man when he failed to look at the meter until 58½ gallons had been delivered. Caldwell was negligent and at fault. His negligence is chargeable to his employer, the respondent Union Gas Company of California. His negligence contributed to causing the disaster.

We conclude that the libelant seamen may recover against both respondents for all damages sustained by reason of their negligence, in which they were joint tort feasons. We further conclude that in the libel filed for damages to the ship itself, Libel No. 27,364, both the owners of the vessel and the Union Gas Company of California were at fault and to blame and must share the loss equally.

A libel in personam was filed by Joseph Salmeri in this court on May 3, 1955, against Frances E.

Cardinale, administratrix of the estate of Frank Joseph Cardinale, also known as Frank J. Cardinale, deceased, and Idaline Jenner Cardinale and others; and by this libel a claim for personal injuries and for maintenance and cure was asserted against respondents [17] as the owners of the Santa Lucia.

It is undisputed that on September 28, 1954, this libelant was employed aboard the Santa Lucia as a fisherman and as a member of the crew, and was injured in the course of this employment on the vessel during the explosion. This libel bears File No. 27,116.

This libelant makes claim for maintenance and cure, and also states damages in the sum of \$100,000.00 for personal injury he alleges he sustained by reason of the unseaworthiness of the Santa Lucia.

A further and additional libel was filed by Salmeri on July 31, 1955, against Union Oil Company of California and Frances E. Cardinale, as administratrix, and Idaline Jenner Cardinale. By this libel a claim for personal injuries resulting from the negligence of all the respondents is asserted in the amount of \$100,000.00. This libel bears File No. 27,117, and has been consolidated for trial with No. 27,116.

Salmeri is 37 years of age. He has been a fisherman for 21 years. He had worked aboard the Santa Lucia for two or three weeks prior to the explosion as a deck hand and stiff man while bringing in anchovies. He had never been in the engine room and knew nothing of its equipment.

Salmeri had helped tie up the ship at the Union Gas wharf and then had gone to the center of the hatch to help clean off the anchovies remaining from the hanging net. He was using a [18] brail to do this. Suddenly he heard the explosion. He was thrown. He noticed his arm was broken. He suffered great pain. He was put into the skiff and later brought to shore.

Salmeri was taken directly to the French Hospital and remained there until October 12, 1954. It was found that he had sustained a comminuted fracture of both the radius and ulna, both bones of the left forearm, which required two separate incisions for reduction fixation with intra-medullary pin and insertion of Kirshner wire, and a third incision for relaxing injury to motor glands of the radial nerve.

It was also found that he had suffered a fractured clavicle, left, flash burns, severe soft tissue damage to his shoulder and arm. The arm was placed in full arm cast. There was later a secondary closure, 11-inch incision, left forearm, following removal of posterior splint.

The final diagnosis was: "Fracture of the clavicle at the juncture of the middle and outer thirds, with upward displacement of medial fragment with minimal overriding. Fracture of right radius and ulna. Comminuted fracture through the junction of the proximal and middle third of the radius with moderate deformity. Comminuted fracture through the midportion of the shaft of the ulna with relatively good position.

There is no question that there is a nonunion of the ulna fracture, and that a bone grafting operation is indicated to alleviate the condition. [19]

It is undisputed that the following expenses are already incurred: San Luis Clinic, \$502.88; anesthesia bills, \$155.00; Dr. Swengel, \$600.00; Monterey Hospital, \$360.50, totaling \$1,618.38; and that the cost of the bone grafting operation and hospitalization will be about \$1,200.00.

The total cost of cure and subsequent treatment are fixed at \$2,818.38. Since no Marine Hospital was immediately available, he may recover because of the prior treatment at these hospitals, and he should not be required to go to the Marine Hospital for the subsequent operation, but may have that corrective operation performed by the doctors who are familiar with his condition by reason of their prior treatment.

Salmeri was at Monterey Hospital from April 14, 1955, to April 17, 1955; from October 12th to October 24th, 1955. We have not had in evidence the records of the Monterey Hospital treatment.

Salmeri went back to work for the Fishermen's Union about eight months after the explosion. He is entitled to maintenance for this period of 240 days, less 15 days at French Hospital, or a total of 225 days at \$8.00 a day, and in addition, for a 6-months period of convalescence following the indicated bone grafting operation, or an additional 180 days at \$8.00 a day, making a total of 405 days at \$8.00 a day, or \$3,240.00 for maintenance. His claim for cure and maintenance I fix at \$6,058.38. [20]

I find that he will never again be able to work as a fisherman; that he will also suffer serious impairment in the functioning and use of his arm; that he will suffer and has suffered great pain and distress.

I fix his total damage, including maintenance and cure, at the sum of \$38,308.38, and award him judgment in that amount against all the respondents as joint tort feorsors.

Two libels in personam were also filed by Antoine Bellici, a member of the crew, on his behalf. These libels, Nos. 27,122 and 27,123, are similar to the libels filed by his fellow seamen and seek recovery from the owner of maintenance and cure and of all the respondents for negligence, and of respondent owners for injuries sustained by reason of the unseaworthiness of the vessel.

Bellici was the cook on the vessel. I cannot find any negligence of his contributed to the happening of the explosion. He was in the galley. The explosion took place and the fire began below deck.

Bellici is 53 years old. He received an injury to the left side of his head above the ear, a knock or bruise of no great moment. His right arm was swollen above the elbow. He had bruises around his ribs, and his back suffered some strain.

He was at the French Hospital from September 28, 1954, to October 1, 1954, a period of three [21] days.

I fix his cure at \$255.12, being the charge of the French Hospital, and \$165.50 and of the San Luis Clinic of \$88.62. No nearby Marine Hospital was available for emergency and immediate treatment.

I fix due to him for maintenance 220 days from October 1, 1954, to May 18, 1955, at \$8.00 a day, totaling \$1,760.00, or a total of maintenance and cure of \$2,015.12.

Prior to the explosion he was suffering from degenerative arthritis and much of the pain in his back is due to this condition. However, I find it to have been aggravated by the injuries sustained at the time of the explosion. I find that the libelant is entitled to judgment jointly, including the cost of maintenance and cure, against all of the respondents as joint tort feasons in the sum of \$3,515.12.

Two libels in personam were also filed by Francisco L. Pedrasaz, who was also one of the crew of the Santa Lucia. A libel numbered 27,118 filed by Pedrasaz on May 3, 1955, named Frances E. Cardinale, administratrix of the estate of Frank J. Cardinale, and Idaline Jenner Cardinale as respondents. This libel asserted a claim against the respondents, the owners and operators of the Santa Lucia, and as the employers of Pedrasaz, and recovery in the amount of \$100,000.00 is sought for personal injuries alleged to have been sustained by libelant Pedrasaz at the time of the explosion. This claim is predicated upon allegations of unseaworthiness of [22] the vessel Santa Lucia. And the libel also alleges a claim for maintenance and cure.

He also filed libel No. 27,119 against the owners of Union Oil Company seeking recovery on a claim predicated on negligence.

Pedrasaz is 36 years of age. He was a member of the Butcher's Union prior to the explosion and at

times worked as a fisherman. He was one of the crew. He was working on the deck when the explosion occurred. He was taken to French Hospital and remained there until October 4, 1954. He was found to have bruises to his right ankle, but no break, and examination of his right wrist and forearm showed markedly comminuted fracture of the distal end of the radius. The fracture entered the joint space and resulted in an impaction, shortening and reversal of the plane of the articular surface of the radius.

He was taken to the United States Marine Hospital on October 4, 1954, and remained there until October 13, 1954, and a closed reduction was accomplished and the wrist was placed in a cast. It was found that he had a right Colles fracture, and right incomplete fracture of the medial malleolus.

Pedrasaz was readmitted to the United States Marine Hospital on February 14, 1955, and the following day an osteotomy was performed on the right radius and graft taken [23] from the crest of the right ilium. He was discharged from the hospital on February 26, 1955, and was on July 26, 1955, reported to have fully healed to all practical purposes, and was then able to go to work.

Although he has some partial disability to his wrist, arm and power of grasp, some numbness in the distal tip of his right index finger, he has been working as a butcher making \$90.00 a week, which is as much as he was earning before.

I fix Pedrasaz's cure at \$167.37, the bill of the French Hospital, and fix maintenance from October

13, 1954, to July 26, 1955, save for the period when he was in the Marine Hospital in February, 1955, or for total of 274 days at \$8.00 a day, or a total of \$2,192.00, making a total for maintenance and cure of \$2,359.37.

For pain and suffering and impairment of full use of his arm, for all the damage he has sustained, including his claim for maintenance and cure, I grant him judgment jointly against all the respondents in the sum of \$14,167.37, as joint tort feasers.

Two libels in personam were also filed by Antoine Bellici as administrator of the estate of Jacques Cardinale, to recover for his wrongful death. A libel filed on May 3, 1955, named the owners of the Santa Lucia as respondents, and sought judgment in the behalf of the widow and two minor children [24] of the deceased upon a claim of unseaworthiness, and a libel filed on the same day, No. 27,125, named the Union Oil Company of California and the owners of the Santa Lucia as respondents, and pleaded a claim predicated upon negligence, that is, Libel No. 27,124, and 27,125, along with the other libels considered herein.

The deceased, Jacques Cardinale, was found by a fellow crewman, Salvadore Romeo, immediately following the explosion lying unconscious on what remained of the deck. The upper part of Cardinale's body was hanging over the edge of the hatch on the fish hold, and a brail was lying over him. Romeo tried to take Cardinale with him as he left the ship. He was not able to do so.

Another seaman, Horace Adagio, was Jacques Cardinale's brother-in-law. He saw the body covered with the brail and debris. Adagio also was unable to rescue him.

The deceased met his death through no negligence of his own, solely because of the unseaworthiness of the Santa Lucia and the joint negligence of the respondents.

Cardinale's body was later recovered, prepared for burial, shipped to his native Algiers for interment, at a total expenditure of \$1,917.23, which has been stipulated was a reasonable charge for these services. A seaman is entitled to be returned to his native land and there buried at the expense of those who caused his death. [25]

Jacques Cardinale at the time of his death was 47 years of age, in apparent good health, and had been privately employed as a fisherman. There was evidence to support a finding that his annual income was \$3,500.00 to \$4,000.00. He was married. There is a widow and two minor children surviving.

The widow, Marie Cardinale, is 42 years of age. The daughter, Francoise Cardinale, is not quite 12 years of age, and his son, Vincent Joseph Cardinale, was seven and one-half years of age when Jacques Cardinale met his death.

The deceased was a good family man who fairly fulfilled his obligations to his family in proportion to their needs. He had been a master fisherman in his native Algiers, working with his brothers on a family fishing boat. He had left for the United States in February, 1954, and it was his intention

to stay in the United States about two years and, if successful, he intended to send for his wife and children.

When he left, he provided some funds for their support, that is, for the support of his family in his absence. Exactly how much, we are not informed, but it was sufficient to take care of their needs. He also had sent about \$650.00 to his wife since February, 1954, and the fishing season was in progress at the time of his death.

I measure the pecuniary loss of his estate at \$1,917.23, the cost of the funeral and burial; to his widow, Marie [26] Cardinale, \$20,000.00; to his daughter, Francoise Noel, \$7,500.00; and to his son, Vincent Joseph Cardinale, \$12,000.00. I award judgment against the respondent owners and Union Oil Company as joint tortfeasors in the total amounts of \$41,417.23.

Final decrees may be submitted providing for judgments as indicated heretofore, with taxable costs and disbursements, but without interest.

Frances Cardinale as administratrix of the estate of Frank J. Cardinale, and Idaline Jenner Cardinale have also, as we have heretofore noted, filed a petition for limitation of liability under Section 181, et seq., Title 46 of the United States Code, File No. 27,211.

The fundamental provision of the Limited Liability Act declares: "Liability for any damage arising from any disaster at sea which is occasioned without the privity or knowledge of the ship owner shall in no case exceed the value of the vessel at fault, to-

gether with her impending freight." 46 U.S. Code, Section 183.

Lake Tankers Corporation versus Henn, administratrix, 354 U.S. 147 at page 150, 1957.

We have heretofore found that the disaster was occasioned in part by the personal negligence of Frank J. Cardinale, one of the co-owners of the Santa Lucia, and that the ship was unseaworthy, and that the co-owner, Frank J. Cardinale, [27] was personally in charge of the operation and management of the vessel and was aboard her at the time of the explosion. It was the personal duty of the owners to see that the ship was seaworthy, that its equipment was safe. This duty they failed to perform.

Limitation relief may be obtained only when the negligence causing the disaster occurs without privity or knowledge on the part of the owners. The burden of proof of such absence of privity and knowledge is on the petitioner's onus. The Silver Palm, 94 Fed. 2d 776, Court of Appeals, Ninth Circuit, 1937.

This burden the petitioners have failed to carry. Petition is denied upon the merits, and taxable costs against the petitioners.

A libel in personam was also filed on July 23, 1956, Libel No. 27,364, by Frances E. Cardinale as administratrix and Idaline Jenner Cardinale to recover from the Union Oil Company for the loss of the Santa Lucia.

We have at the outset of this decision referred to this suit. It is libelants' contention that the loss of

the Santa Lucia was occasioned by the negligence of the Union Oil Company. This Court has jurisdiction of the subject matter of this claim. The respondent's negligent acts constitute a maritime tort. We conclude that they do, and that these libelants may therefore have recovery, notwithstanding the [28] fact that the negligence of the libelants themselves contributed to the disaster, and that both libelants and respondents are at fault and both to blame.

The negligent acts of respondents, heretofore found, although committed on the wharf, produced no actionable injury until the Santa Lucia exploded, took fire and sank. As Judge Goodman has written in *Wilson versus Trans-Atlantic Air Lines*, 121 Fed. Sup. 85, page 92:

“Admiralty tort jurisdiction has never depended upon the nature of the tort or how it came about, or upon the locality where it occurred.”

And he continued later:

“In applying the locality test for admiralty jurisdiction, the tort is deemed to have occurred not where the wrongful act or omission has its inception, but where the impact of the act or omission produces such injury as to give rise to a cause of action.”

We, according to the findings heretofore made, conclude that in this suit an interlocutory decree adjudging both to blame and providing for a reference

to a Commission for determination and fixation of damage may be submitted on notice.

It is the Court's intention that the decision now rendered in all these suits shall constitute the findings of fact made by the Court and the conclusions of law based on such [29] findings, and it is so ordered.

Gentlemen, once again I want to thank you for the kindness and courtesy to me, and to tell you that you have made my stay here in this court a very happy and memorable event, and I hope to come back again.

Respondents may have exception to my ruling and, as I advised counsel, they may submit briefs within the next three weeks, and I will hold up the final decree until the first of October.

Thank you, gentlemen.

[Endorsed]: Filed September 19, 1957. [30]

In the District Court of the United States, in and
for the Southern Division of the Northern Dis-
trict of California

In Admiralty Nos. 27116 and 27117
(Consolidated)

JOSEPH SALMERI,

Libelant,

vs.

FRANCES E. CARDINALE, Administratrix of
the Estate of FRANK JOSEPH CARDI-
NALE, Also Known as FRANK J. CARDI-
NALE, Deceased; IDALINE JENNER CAR-
DINALE, et al.,

Respondents.

JOSEPH SALMERI,

Libelant,

vs.

UNION OIL COMPANY OF CALIFORNIA, a
Corporation; FRANCES E. CARDINALE,
Administratrix of the Estate of FRANK
JOSEPH CARDINALE, Also Known as
FRANK J. CARDINALE, Deceased; IDA-
LINE JENNER CARDINALE, et al.,

Respondents.

FINAL DECREE

The above-entitled cases having come on regularly
to be heard on the 3rd, 4th, 5th, 6th, 9th, 10th, 11th
and 12th days of September, 1957, and the court
having considered the evidence, both oral and docu-
mentary, and the arguments of counsel, and the
cause having been submitted and the court having

made and entered its Findings of Fact and Conclusions of Law, Now, Therefore,

It Is Ordered, Adjudged and Decreed that libelant, Joseph Salmeri, recover of and from the respondents, Frances E. Cardinale, Administratrix of the Estate of Frank Joseph Cardinale, also known as Frank J. Cardinale, Deceased, and Idaline Jenner Cardinale, and Union Oil Company of California, a corporation, jointly and severally, the total sum of \$38,308.38.

It Is Further Ordered, Adjudged and Decreed that libelant, Joseph Salmeri, recover of and from the respondents, Frances E. Cardinale, Administratrix of the Estate of Frank Joseph Cardinale, also known as Frank J. Cardinale, Deceased, and Idaline Jenner Cardinale, and Union Oil Company of California, a corporation, jointly and severally, his costs involved herein.

Dated: October 4th, 1957.

/s/ SYLVESTER J. RYAN,
United States District Judge.

Approved as to Form and receipt of a copy of the above and foregoing Final Decree is hereby acknowledged this 27th day of September, 1957.

BOYD & TAYLOR,
By /s/ FREDERIC G. NAVE,
/s/ MORTON L. SILVERS,
MORGAN & BEAUZAY,
Proctors for Respondents.

[Endorsed]: Filed October 10, 1957.

[Title of District Court and Cause.]

No. 27117

NOTICE OF APPEAL

Notice Is Hereby Given that Union Oil Company of California, a corporation, respondent above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on October 11, 1957.

Dated: November 6th, 1957.

FREDERIC G. NAVE,
BOYD & TAYLOR,

By /s/ FREDERIC G. NAVE,
Attorneys for Appellant, Union Oil Company of
California, a Corporation.

Receipt of copies admitted.

[Endorsed]: Filed Nov. 7, 1957.

[Title of District Court and Cause.]

No. 27117

STIPULATION EXTENDING TIME TO FILE RECORD AND DOCKET APPEAL

It Is Hereby Stipulated and Agreed, by and between the attorneys for the parties hereto, subject to the order of the court, that the time within which respondents-appellants shall file the record on ap-

peal and docket the appeal from judgment entered herein on October 11, 1957, in the United States Court of Appeals for the Ninth Circuit be extended to and including January 13, 1958.

Dated: December 12, 1957.

/s/ RUSSELL ZACHES,

/s/ SAMUEL VARTAN,

MICHELSON, WHELAN &
MICHELSON,

Attorneys for Libelant,
Joseph Salmeri.

FREDERIC G. NAVE,
BOYD & TAYLOR,

By /s/ FREDERIC G. NAVE,
Attorneys for Respondents-Appellants, Union Oil
Company of California, a Corporation, et al.

So Ordered: December 12, 1957.

/s/ GEO. B. HARRIS,
United States District Judge.

[Endorsed]: Filed Dec. 16, 1957.

[Title of District Court and Cause.]

No. 27117

ORDER EXTENDING TIME

Upon reading the Affidavit of Frederic G. Nave,
Proctor for Respondent and Appellant, Union Oil

Company of California, a corporation, and for good cause appearing;

It Is Hereby Ordered that the time within which the Respondent-Appellant, Union Oil Company of California, a corporation, shall file the record or appeal and docket the appeal from the judgment entered herein on October 11, 1957, in the United States Court of Appeals for the Ninth Circuit be extended to and including February 12, 1958.

Dated: January 13, 1958.

/s/ O. D. HAMLIN,

United States District Judge.

[Endorsed]: Filed Jan. 13, 1958.

[Title of District Court and Cause.]

No. 27117

AFFIDAVIT OF FREDERIC G. NAVE

State of California,

City and County of San Francisco—ss.

Frederic G. Nave, being first duly sworn, deposes and says:

That he is an attorney and proctor of law duly licensed and admitted in the above-entitled court and is the proctor attorney for the appellant, Union Oil Company of California, a corporation, and makes this affidavit for and on behalf of said appellant, Union Oil Company of California, a cor-

poration; that heretofore on December 12, 1957, pursuant to stipulation and order of this court the time within which the Appellant, Union Oil Company of California, a corporation, should file its record on appeal and docket the appeal from the judgment entered herein on October 11, 1957, in the United States Court of Appeals for the Ninth Circuit was extended to and including January 13, 1958; that affiant has consulted with the reporters who are preparing the record and transcripts and has been advised that due to the press of work that the record and transcript is not yet completed and have requested an extension of time of thirty (30) days for such purposes; that affiant did communicate with Attorney John Whelan, of the law firm of Michelson, Whelan & Michelson, of San Francisco, who are the proctors and attorneys for the Libellant-Appellee, and did request the written stipulation consenting to such extension and was advised that while they would not grant a stipulation in writing that they had no objection to a court order granting such extension being entered.

/s/ FREDERIC G. NAVE.

Subscribed and sworn to before me this 13th day of January, 1958.

/s/ VIRGINIA A. HAMILTON,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires May 2, 1960.

[Endorsed]: Filed Jan. 13, 1958.

[Title of District Court and Cause.]

No. 27117

CERTIFICATE OF CLERK TO RECORD
ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein:

Libel (Damages for Personal Injuries—
\$100,000.00.)

Answer to Libel.

Answer to Libel in Personam.

Minute Order dated August 5, 1957, consolidating cases for trial.

Findings of Facts, Conclusions of Law and Decision of the Court. (Reporter's Transcript.)

Final Decree.

Notice of Appeal.

Designation of Contents of Record on Appeal.

Stipulation Extending Time to File Record and Docket Appeal.

Order Extending Time.

Affidavit of Frederic G. Nave.

Libelant's Exhibits 1 to 12, inclusive.

Respondents' Exhibits A to W, inclusive.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 16th day of January, A.D. 1958.

C. W. CALBREATH,
Clerk;

By /s/ WM. J. FLINN,
Deputy Clerk.

[Endorsed]: No. 15875. United States Court of Appeals for the Ninth Circuit. Union Oil Company of California, a Corporation, Appellant, vs. Joseph Salmeri, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed: January 16, 1958.

Docketed: February 5, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15875

JOSEPH SALERMI,

Libelant and Appellee,

vs.

UNION OIL COMPANY OF CALIFORNIA, a
Corporation, et al.,

Respondents and Appellants.

DESIGNATION OF THE CONTENTS
OF RECORD ON APPEAL

Appellant, Union Oil Company of California, a corporation, designates the entire record pursuant to Rule 17 (6) of the United States Court of Appeals for the Ninth Circuit, including the Reporter's transcript and all exhibits.

Dated: February 6, 1958.

FREDERIC G. NAVE,
BOYD & TAYLOR,

By /s/ FREDERICK G. NAVE,
Proctors for Appellant, Union Oil Company of
California, a Corporation.

[Endorsed]: Filed Feb. 5, 1958.

[Title of Court of Appeals and Cause.]

No. 15875

APPELLANT'S STATEMENT
OF POINTS ON APPEAL

Appellant, Union Oil Company of California, a corporation, hereby submits its concise statement of points upon which appellant intends to rely in this appeal as follows:

1. The Court erred in finding that the injuries sustained by the libelant were caused or occasioned by negligence of appellant proximately causing or contributing to the explosion of the F/V Santa Lucia.

2. The Court erred in finding that the injuries sustained by the libelant occurred because of fault or negligence on the part of this respondent.

3. The Court erred in not finding that the sole cause of the injuries to the libelant was due to the unseaworthiness of the F/V Santa Lucia and to the personal and active negligence of Frank J. Cardinale, one of the co-owners of the F/V Santa Lucia.

4. The Court erred in finding that Charles Caldwell, the marine service station employee of appellant, was guilty of negligence contributing to the explosion and fire aboard the F/V Santa Lucia.

5. The Court erred in finding that respondent was guilty of negligence as a joint tortfeasor in this action.

6. The Court erred in finding that the appellant, Union Oil Company of California, was at fault and to blame for the injuries received by the libelant.

7. The Court erred in finding that the respondent, Union Oil Company of California, was jointly at fault and to blame with the co-owners, Frances E. Cardinale, administratrix of the estate of Frank J. Cardinale, and Idaline Jenner Cardinale, the co-owners of the F/V Santa Lucia.

8. The Court erred in failing to find, as a conclusion of law, that the appellant, Union Oil Company of California, was not negligent in any manner contributing to the explosion and fire of the F/V Santa Lucia and resulting injuries to libelant.

9. The Court erred in making findings of fact that Charles Caldwell, an employee of respondent, Union Oil Company of California, was negligent and at fault when he failed to look at the gasoline meter until 58½ gallons had been delivered to the F/V Santa Lucia.

10. The Court erred in its findings of fact that the failure of the said Charles Caldwell, an employee of the Union Oil Company of California, to look at the gasoline meter until 58½ gallons had been delivered, was negligence contributing to or causing the explosion and fire aboard the F/V Santa Lucia and resulting injuries to libelant.

11. The Court erred in making and entering the findings of fact that the respondent, Union Oil

Company of California, was negligent and at fault in not exercising reasonable care or prudence and that its failure so to do was a proximate cause of the explosion and fire on the F/V Santa Lucia and the resulting injuries to libelant.

12. The Court erred in that the findings of fact heretofore mentioned are not supported by any evidence in the trial of said action.

13. The Court erred in that there was no evidence to support its findings of negligence against the said Caldwell or this appellant heretofore specifically mentioned.

14. The Court erred in adopting conclusions of law inconsistent with its findings of facts.

15. The Court properly concluded that the explosion aboard the F/V Santa Lucia was due to an unseaworthiness aboard the Santa Lucia and to the personal and active negligence of Frank J. Cardinale, one of the co-owners of the ship, but conclusions of law holding appellant, Union Oil Company of California, to be a joint tortfeasor was inconsistent therein.

16. The Court erred in awarding judgment in favor of libelant against this appellant.

17. The Court erred in allowing excessive damages against this appellant.

18. That the amount of damages awarded libelant against this appellant included maintenance and

cure which, under the evidence of this case, should not have been awarded against appellant.

19. That the money judgment awarded appellant was excessive and was not supported by the evidence in this case.

Dated: February 6, 1958.

FREDERIC G. NAVE,
BOYD & TAYLOR;

/s/ FREDERIC G. NAVE,
Proctors for Appellant, Union
Oil Company of California.

[Endorsed]: Filed Feb. 5, 1958.